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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,444	04/24/2001	Xin Zhang	401185	1915

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EXAMINER

JONES, HUGH M

ART UNIT PAPER NUMBER

2128

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/840,444

Applicant(s)

ZHANG ET AL.

Examiner

Hugh Jones

Art Unit

2128

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/27/05, 4/13/05.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Claims 1-5 of U. S. Application 09/840,444 filed 04/24/2001 are presented for examination. Applicants are thanked for their responses and the Information disclosure statements.

#### **Specification**

2. The incorporation of essential material in the specification by reference to an unpublished U.S. application, foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference, if the material is relied upon to overcome any objection, rejection, or other requirement imposed by the Office. The amendment must be accompanied by a statement executed by the applicant, or a practitioner representing the applicant, stating that the material being inserted is the material previously incorporated by reference and that the amendment contains no new matter. 37 CFR 1.57(f).

3. Applicants rely on the paper for essential matter. Furthermore, Applicants in traversing the enablement rejections point to the document for enablement.

4. The attempt to incorporate subject matter into this application by reference to *Li* is also ineffective for the following reasons. The issues regarding authorship can not be resolved by argument. The incorporation by reference, as it stands, incorporates by reference a paper that, legally, does not exist. Factual evidence is required to traverse the issue.

**Claim Rejections - 35 USC § 102**

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Li et al..

7. Li et al. disclose integrated CAD for functional textiles and apparel. See figures 3-6; especially note figure 5, which discloses CAD technology for mechanical functional design. The Li et al. paper is by *another inventive entity*.

8. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Okabe et al..

9. Okabe et al. discloses

1) A method of creating thermal functional designs of textiles and clothing using a computer and visual display monitor controlled by the computer, the method comprising:

supplying the computer information from databases relating to biomechanical and structural characteristics of human body and structural and mechanical characteristics of chosen textile materials for computational simulation of the information (fig. 1-2), and

creating visual images for the monitor showing modules of structural functional designs (fig. 1-3).

2) The method according to claim 1 in which the database of the human body comprises human model data specific body functions, including size and shape (fig. 1-2).

3) The method according to claim 1 in which the database of the garments comprises clothing patterns data and product specification data (fig. 1-2).

4) The method according to claim 1 in which the database of the human body comprises mechanical property data, including clothing biomechanical and mechanical comfort data (fig. 1, section 4).

5) the method according to claim 1 in which the database textile materials comprises structural and mechanical property data, including fibres, yarns, fabrics and garments (fig. 1-2).

### **Response to Arguments**

10. Applicant's arguments of 11/22/2005 have been carefully reviewed, and are not persuasive.

11. The Examiner has noted Applicant's commentary on page 2 and the first paragraph on page 3 of the response of 11/22/2005. Respectfully, the Examiner is under no duty to disclose. No further comment is deemed necessary.

12. Applicant's commentary beginning on the second paragraph on page two and continuing on to the next page regarding similarities between documents is noted, but not persuasive. See MPEP 2145, which states, in part: "The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145

USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997) ("An assertion of what seems to follow from common experience is just attorney argument and not the kind of factual evidence that is required to rebut a prima facie case of obviousness.").

13. Applicant's arguments of 4/13/2005 have been carefully reviewed, and are not persuasive. No further comment is necessary regarding the first three paragraphs because they have already been addressed in earlier communications.

14. The 112 are withdrawn in view of the teachings with the Li et al. paper. However, the paper is improperly incorporated by reference, as noted above.

15. The Lennon rejection is withdrawn and the arguments are moot.

### **Conclusion**

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

17. Furthermore, Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 11/22/2005 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**19. Any inquiry concerning this communication or earlier communications from the examiner should be:**

directed to: Dr. Hugh Jones telephone number (571) 272-3781,  
Monday-Thursday 0830 to 0700 ET,

**or**

the examiner's supervisor, Kamini Shah, telephone number (571) 272-2279.  
Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, telephone number (703) 305-3900.

**mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

(703) 308-9051 (for formal communications intended for entry)  
**or** (703) 308-1396 (for informal or draft communications, please label *PROPOSED* or *DRAFT*).

Dr. Hugh Jones

Application/Control Number: 09/840,444  
Art Unit: 2128

Page 7

Primary Patent Examiner  
December 23, 2005

  
HUGH JONES Ph.D.  
PRIMARY PATENT EXAMINER  
TECHNOLOGY CENTER 2100